

[COMMITTEE PRINT]

MARCH 3, 2003

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1000
OFFERED BY MR. BOEHNER**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Pension Security Act of 2003”.

4 (b) TABLE OF CONTENTS.—The table of contents is
5 as follows:

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

Sec. 101. Periodic pension benefits statements.

Sec. 102. Inapplicability of relief from fiduciary liability during blackout periods.

Sec. 103. Informational and educational support for pension plan fiduciaries.

Sec. 104. Diversification requirements for defined contribution plans that hold employer securities.

Sec. 105. Prohibited transaction exemption for the provision of investment advice.

Sec. 106. Study regarding impact on retirement savings of participants and beneficiaries by requiring consultants to advise plan fiduciaries of individual account plans.

Sec. 107. Treatment of qualified retirement planning services.

Sec. 108. Effective dates and related rules.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

Sec. 201. Amendments to Retirement Protection Act of 1994.

Sec. 202. Reporting simplification.

Sec. 203. Improvement of employee plans compliance resolution system.

Sec. 204. Flexibility in nondiscrimination, coverage, and line of business rules.

Sec. 205. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.

- Sec. 206. Notice and consent period regarding distributions.
Sec. 207. Annual report dissemination.
Sec. 208. Technical corrections to Saver Act.
Sec. 209. Missing participants.
Sec. 210. Reduced PBGC premium for new plans of small employers.
Sec. 211. Reduction of additional PBGC premium for new and small plans.
Sec. 212. Authorization for PBGC to pay interest on premium overpayment refunds.
Sec. 213. Substantial owner benefits in terminated plans.
Sec. 214. Benefit suspension notice.
Sec. 215. Studies.
Sec. 216. Interest rate range for additional funding requirements.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Provisions relating to plan amendments.

1 **TITLE I—IMPROVEMENTS IN** 2 **PENSION SECURITY**

3 **SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.**

4 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
5 INCOME SECURITY ACT OF 1974.—

6 (1) REQUIREMENTS.—

7 (A) IN GENERAL.—Section 105(a) of the
8 Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1025(a)) is amended to read
10 as follows:

11 “(a)(1)(A) The administrator of an individual ac-
12 count plan shall furnish a pension benefit statement—

13 “(i) to each plan participant at least annually,

14 “(ii) to each plan beneficiary upon written re-
15 quest, and

16 “(iii) in the case of an applicable individual ac-
17 count plan, to each individual who is a plan partici-

1 pant or beneficiary and who has a right to direct in-
2 vestments, at least quarterly.

3 “(B) The administrator of a defined benefit plan
4 shall furnish a pension benefit statement—

5 “(i) at least once every 3 years to each partici-
6 pant with a nonforfeitable accrued benefit who is
7 employed by the employer maintaining the plan at
8 the time the statement is furnished to participants,
9 and

10 “(ii) to a plan participant or plan beneficiary of
11 the plan upon written request.

12 Information furnished under clause (i) to a participant
13 may be based on reasonable estimates determined under
14 regulations prescribed by the Secretary, in consultation
15 with the Pension Benefit Guaranty Corporation.

16 “(2) A pension benefit statement under paragraph
17 (1)—

18 “(A) shall indicate, on the basis of the latest
19 available information—

20 “(i) the total benefits accrued, and

21 “(ii) the nonforfeitable pension benefits, if
22 any, which have accrued, or the earliest date on
23 which benefits will become nonforfeitable,

24 “(B) shall be written in a manner calculated to
25 be understood by the average plan participant, and

1 “(C) may be provided in written form or in
2 electronic or other appropriate form to the extent
3 that such form is reasonably accessible to the recipi-
4 ent.

5 “(3)(A) In the case of a defined benefit plan, the re-
6 quirements of paragraph (1)(B)(i) shall be treated as met
7 with respect to a participant if the administrator, at least
8 once each year, provides the participant with notice, at
9 the participant’s last known address, of the availability of
10 the pension benefit statement and the ways in which the
11 participant may obtain such statement. Such notice shall
12 be provided in written, electronic, or other appropriate
13 form, and may be included with other communications to
14 the participant if done in a manner reasonably designed
15 to attract the attention of the participant.

16 “(B) The Secretary may provide that years in which
17 no employee or former employee benefits (within the
18 meaning of section 410(b) of the Internal Revenue Code
19 of 1986) under the plan need not be taken into account
20 in determining the 3-year period under paragraph
21 (1)(B)(i).”.

22 (B) CONFORMING AMENDMENTS.—

23 (i) Section 105 of the Employee Re-
24 tirement Income Security Act of 1974 (29

1 U.S.C. 1025) is amended by striking sub-
2 section (d).

3 (ii) Section 105(b) of such Act (29
4 U.S.C. 1025(b)) is amended to read as fol-
5 lows:

6 “(b) In no case shall a participant or beneficiary of
7 a plan be entitled to more than one statement described
8 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)
9 or (ii) of subsection (a)(1)(B), whichever is applicable, in
10 any 12-month period. If such report is required under sub-
11 section (a) to be furnished at least quarterly, the require-
12 ments of the preceding sentence shall be applied with re-
13 spect to each quarter in lieu of the 12-month period.”.

14 (2) INFORMATION REQUIRED FROM APPLICA-
15 BLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of
16 such Act (as amended by paragraph (1)) is amended
17 further by adding at the end the following new sub-
18 section:

19 “(d)(1) The statements required to be provided at
20 least quarterly under subsection (a)(1)(A)(iii) in the case
21 of applicable individual account plans shall include (to-
22 gether with the information required in subsection (a)) the
23 following:

24 “(A) the value of each investment to which as-
25 sets in the individual account have been allocated,

1 determined as of the most recent valuation date
2 under the plan, including the value of any assets
3 held in the form of employer securities, without re-
4 gard to whether such securities were contributed by
5 the plan sponsor or acquired at the direction of the
6 plan or of the participant or beneficiary,

7 “(B) an explanation, written in a manner cal-
8 culated to be understood by the average plan partici-
9 pant, of any limitations or restrictions on the right
10 of the participant or beneficiary to direct an invest-
11 ment, and

12 “(C) an explanation, written in a manner cal-
13 culated to be understood by the average plan partici-
14 pant, of the importance, for the long-term retire-
15 ment security of participants and beneficiaries, of a
16 well-balanced and diversified investment portfolio,
17 including a discussion of the risk of holding more
18 than 25 percent of a portfolio in the security of any
19 one entity, such as employer securities.

20 “(2) The Secretary shall issue guidance and model
21 notices which meet the requirements of this subsection.”.

22 (3) DEFINITION OF APPLICABLE INDIVIDUAL
23 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
24 1002) is amended by adding at the end the following
25 new paragraph:

1 “(42)(A) The term ‘applicable individual account
2 plan’ means any individual account plan, except that such
3 term does not include an employee stock ownership plan
4 (within the meaning of section 4975(e)(7) of the Internal
5 Revenue Code of 1986) unless there are any contributions
6 to such plan (or earnings thereunder) held within such
7 plan that are subject to subsection (k)(3) or (m)(2) of sec-
8 tion 401 of the Internal Revenue Code of 1986. Such term
9 shall not include a one-participant retirement plan.

10 “(B) The term ‘one-participant retirement plan’
11 means a pension plan with respect to which the following
12 requirements are met:

13 “(i) on the first day of the plan year—

14 “(I) the plan covered only one individual
15 (or the individual and the individual’s spouse)
16 and the individual owned 100 percent of the
17 plan sponsor (whether or not incorporated), or

18 “(II) the plan covered only one or more
19 partners (or partners and their spouses) in the
20 plan sponsor;

21 “(ii) the plan meets the minimum coverage re-
22 quirements of section 410(b) of the Internal Rev-
23 enue Code of 1986 (as in effect on the date of the
24 enactment of this paragraph) without being com-

1 bined with any other plan of the business that covers
2 the employees of the business;

3 “(iii) the plan does not provide benefits to any-
4 one except the individual (and the individual’s
5 spouse) or the partners (and their spouses);

6 “(iv) the plan does not cover a business that is
7 a member of an affiliated service group, a controlled
8 group of corporations, or a group of businesses
9 under common control; and

10 “(v) the plan does not cover a business that
11 leases employees.”.

12 (4) CIVIL PENALTIES FOR FAILURE TO PRO-
13 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
14 502 of such Act (29 U.S.C. 1132) is amended—

15 (A) in subsection (a)(6), by striking “(6),
16 or (7)” and inserting “(6), (7), or (8)”;

17 (B) by redesignating paragraph (8) of sub-
18 section (c) as paragraph (9); and

19 (C) by inserting after paragraph (7) of
20 subsection (c) the following new paragraph:

21 “(8) The Secretary may assess a civil penalty against
22 any plan administrator of up to \$1,000 a day for each
23 day on which the plan administrator has failed to comply
24 with the requirements of clause (iii) of section
25 105(a)(1)(A) and has not corrected such failure by pro-

1 viding the required pension benefit statements to the af-
2 fected participants and beneficiaries.”.

3 (5) MODEL STATEMENTS.—The Secretary of
4 Labor shall, not later than 180 days after the date
5 of the enactment of this Act, issue initial guidance
6 and a model benefit statement, written in a manner
7 calculated to be understood by the average plan par-
8 ticipant, that may be used by plan administrators in
9 complying with the requirements of section 105 of
10 the Employee Retirement Income Security Act of
11 1974. Not later than 75 days after the date of the
12 enactment of this Act, the Secretary shall promul-
13 gate interim final rules necessary to carry out the
14 amendments made by this subsection.

15 (b) AMENDMENTS TO THE INTERNAL REVENUE
16 CODE OF 1986.—

17 (1) PROVISION OF INVESTMENT EDUCATION
18 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—
19 Section 414 of the Internal Revenue Code of 1986
20 (relating to definitions and special rules) is amended
21 by adding at the end the following:

22 “(w) PROVISION OF INVESTMENT EDUCATION NO-
23 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

24 “(1) IN GENERAL.—The plan administrator of
25 an applicable pension plan shall provide to each ap-

1 applicable individual an investment education notice
2 described in paragraph (2) at the time of the enroll-
3 ment of the applicable individual in the plan and not
4 less often than annually thereafter.

5 “(2) INVESTMENT EDUCATION NOTICE.—An in-
6 vestment education notice is described in this para-
7 graph if such notice contains—

8 “(A) an explanation, for the long-term re-
9 tirement security of participants and bene-
10 ficiaries, of generally accepted investment prin-
11 ciples, including principles of risk management
12 and diversification, and

13 “(B) a discussion of the risk of holding
14 substantial portions of a portfolio in the secu-
15 rity of any one entity, such as employer securi-
16 ties.

17 “(3) UNDERSTANDABILITY.—Each notice re-
18 quired by paragraph (1) shall be written in a man-
19 ner calculated to be understood by the average plan
20 participant and shall provide sufficient information
21 (as determined in accordance with guidance provided
22 by the Secretary) to allow recipients to understand
23 such notice.

24 “(4) FORM AND MANNER OF NOTICES.—The
25 notices required by this subsection shall be in writ-

1 ing, except that such notices may be in electronic or
2 other form (or electronically posted on the plan’s
3 website) to the extent that such form is reasonably
4 accessible to the applicable individual.

5 “(5) DEFINITIONS.—For purposes of this
6 subsection—

7 “(A) APPLICABLE INDIVIDUAL.—The term
8 ‘applicable individual’ means—

9 “(i) any participant in the applicable
10 pension plan,

11 “(ii) any beneficiary who is an alter-
12 nate payee (within the meaning of section
13 414(p)(8)) under a qualified domestic rela-
14 tions order (within the meaning of section
15 414(p)(1)(A)), and

16 “(iii) any beneficiary of a deceased
17 participant or alternate payee.

18 “(B) APPLICABLE PENSION PLAN.—The
19 term ‘applicable pension plan’ means—

20 “(i) a plan described in clause (i), (ii),
21 or (iv) of section 219(g)(5)(A), and

22 “(ii) an eligible deferred compensation
23 plan (as defined in section 457(b)) of an
24 eligible employer described in section
25 457(e)(1)(A),

1 which permits any participant to direct the in-
2 vestment of some or all of his account in the
3 plan or under which the accrued benefit of any
4 participant depends in whole or in part on hy-
5 pothetical investments directed by the partici-
6 pant. Such term shall not include a one-partici-
7 pant retirement plan or a plan to which section
8 105 of the Employee Retirement Income Secu-
9 rity Act of 1974 applies.

10 “(C) ONE-PARTICIPANT RETIREMENT
11 PLAN DEFINED.—The term ‘one-participant re-
12 tirement plan’ means a retirement plan with re-
13 spect to which the following requirements are
14 met:

15 “(i) on the first day of the plan
16 year—

17 “(I) the plan covered only one in-
18 dividual (or the individual and the in-
19 dividual’s spouse) and the individual
20 owned 100 percent of the plan spon-
21 sor (whether or not incorporated), or

22 “(II) the plan covered only one
23 or more partners (or partners and
24 their spouses) in the plan sponsor;

1 “(ii) the plan meets the minimum cov-
2 erage requirements of 410(b) without
3 being combined with any other plan of the
4 business that covers the employees of the
5 business;

6 “(iii) the plan does not provide bene-
7 fits to anyone except the individual (and
8 the individual’s spouse) or the partners
9 (and their spouses);

10 “(iv) the plan does not cover a busi-
11 ness that is a member of an affiliated serv-
12 ice group, a controlled group of corpora-
13 tions, or a group of businesses under com-
14 mon control; and

15 “(v) the plan does not cover a busi-
16 ness that leases employees.

17 “(6) CROSS REFERENCE.—

**“For provisions relating to penalty for failure to
provide the notice required by this section, see sec-
tion 6652(m).”.**

18 (2) PENALTY FOR FAILURE TO PROVIDE NO-
19 TICE.—Section 6652 of such Code (relating to fail-
20 ure to file certain information returns, registration
21 statements, etc.) is amended by redesignating sub-
22 section (m) as subsection (n) and by inserting after
23 subsection (l) the following new subsection:

1 “(m) FAILURE TO PROVIDE INVESTMENT EDU-
2 CATION NOTICES TO PARTICIPANTS IN CERTAIN
3 PLANS.—In the case of each failure to provide a written
4 explanation as required by section 414(w) with respect to
5 an applicable individual (as defined in such section), at
6 the time prescribed therefor, unless it is shown that such
7 failure is due to reasonable cause and not to willful ne-
8 glect, there shall be paid, on notice and demand of the
9 Secretary and in the same manner as tax, by the person
10 failing to provide such notice, an amount equal to \$100
11 for each such failure, but the total amount imposed on
12 such person for all such failures during any calendar year
13 shall not exceed \$50,000.”.

14 **SEC. 102. INAPPLICABILITY OF RELIEF FROM FIDUCIARY**
15 **LIABILITY DURING BLACKOUT PERIODS.**

16 (a) IN GENERAL.—Section 404(c) of the Employee
17 Retirement Income Security Act of 1974 (29 U.S.C.
18 1104(c)) is amended by adding at the end the following
19 new paragraph:

20 “(4)(A) Paragraph (1)(B) shall not apply in connec-
21 tion with the direction or diversification of assets credited
22 to the account of any participant or beneficiary during a
23 blackout period if, by reason of the imposition of such
24 blackout period, the ability of such participant or bene-

1 fiduciary to direct or diversify such assets is suspended, lim-
2 ited, or restricted.

3 “(B) If the fiduciary authorizing a blackout period
4 meets the requirements of this title in connection with au-
5 thorizing such blackout period, no person who is a fidu-
6 ciary shall be liable under this title for any loss occurring
7 during the blackout period as a result of any exercise by
8 the participant or beneficiary of control over assets in his
9 or her account prior to the blackout period. Matters to
10 be considered in determining whether a fiduciary has met
11 the requirements of this title include whether such
12 fiduciary—

13 “(i) has considered the reasonableness of the
14 expected length of the blackout period,

15 “(ii) has provided the notice required under sec-
16 tion 101(i)(2), and

17 “(iii) has acted in accordance with the require-
18 ments of subsection (a) in determining whether to
19 enter into the blackout period.

20 “(C) If a blackout period arises in connection with
21 a change in the investment options offered under the plan,
22 a participant or beneficiary shall be deemed to have exer-
23 cised control over the assets in his or her account prior
24 to the blackout period, if, after reasonable notice of the
25 change in investment options is given to such participant

1 or beneficiary before such blackout period, assets in the
2 account of the participant or beneficiary are transferred—

3 “(i) to plan investment options in accordance
4 with the affirmative election of the participant or
5 beneficiary, or

6 “(ii) in any case in which there is no such elec-
7 tion, in the manner set forth in such notice.

8 “(D) Any imposition of any limitation or restriction
9 that may govern the frequency of transfers between invest-
10 ment vehicles shall not be treated as the imposition of a
11 blackout period to the extent such limitation or restriction
12 is disclosed to participants or beneficiaries through the
13 summary plan description or materials describing specific
14 investment alternatives under the plan.

15 “(E) For purposes of this paragraph, the term ‘black-
16 out period’ has the meaning given such term by section
17 101(i)(7).”.

18 (b) GUIDANCE.—The Secretary of Labor shall, on or
19 before December 31, 2004, issue interim final regulations
20 providing guidance on how plan sponsors or any other af-
21 fected fiduciaries can satisfy their fiduciary responsibilities
22 during any blackout period during which the ability of a
23 participant or beneficiary to direct the investment of as-
24 sets in his or her individual account is suspended.

1 **SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT**
2 **FOR PENSION PLAN FIDUCIARIES.**

3 Section 404 of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
5 at the end the following new subsection:

6 “(e) The Secretary shall establish a program under
7 which information and educational resources shall be
8 made available on an ongoing basis to persons serving as
9 fiduciaries under employee pension benefit plans so as to
10 assist such persons in diligently and effectively carrying
11 out their fiduciary duties in accordance with this part.
12 Such program shall provide information concerning the
13 practices that define prudent investment procedures for
14 plan fiduciaries. Information provided under the program
15 shall address the relevant investment considerations for
16 defined benefit and defined contribution plans, including
17 investment in employer securities by such plans. In devel-
18 oping such program, the Secretary shall solicit information
19 from the public, including investment education profes-
20 sionals.”.

21 **SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
22 **CONTRIBUTION PLANS THAT HOLD EM-**
23 **PLOYER SECURITIES.**

24 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
25 INCOME SECURITY ACT OF 1974.—Section 204 of the

1 Employee Retirement Income Security Act of 1974 (29
2 U.S.C. 1054) is amended—

3 (1) by redesignating subsection (j) as sub-
4 section (k); and

5 (2) by inserting after subsection (i) the fol-
6 lowing new subsection:

7 “(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

10 “(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

13 “(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if
16 each applicable individual may elect to direct the
17 plan to divest any such securities in the individual’s
20 account and to reinvest an equivalent amount in
21 other investment options which meet the requirements of paragraph (4).

24 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
25 EMPLOYER SECURITIES.—

1 “(A) IN GENERAL.—In the case of the por-
2 tion of the account attributable to employer
3 contributions (other than elective deferrals to
4 which paragraph (2) applies) which is invested
5 in employer securities, a plan meets the require-
6 ments of this paragraph if, under the plan—

7 “(i) each applicable individual with a
8 benefit based on 3 years of service may
9 elect to direct the plan to divest any such
10 securities in the individual’s account and
11 to reinvest an equivalent amount in other
12 investment options which meet the require-
13 ments of paragraph (4), or

14 “(ii) with respect to any employer se-
15 curity allocated to an applicable individ-
16 ual’s account during any plan year, such
17 applicable individual may elect to direct
18 the plan to divest such employer security
19 after a date which is not later than 3 years
20 after the end of such plan year and to re-
21 invest an equivalent amount in other in-
22 vestment options which meet the require-
23 ments of paragraph (4).

24 “(B) APPLICABLE INDIVIDUAL WITH BEN-
25 EFIT BASED ON 3 YEARS OF SERVICE.—For

1 purposes of subparagraph (A), an applicable in-
2 dividual has a benefit based on 3 years of serv-
3 ice if such individual would be an applicable in-
4 dividual if only participants in the plan who
5 have completed at least 3 years of service (as
6 determined under section 203(b)) were referred
7 to in paragraph (5)(B)(i).

8 “(4) INVESTMENT OPTIONS.—The requirements
9 of this paragraph are met if—

10 “(A) the plan offers not less than 3 invest-
11 ment options, other than employer securities, to
12 which an applicable individual may direct the
13 proceeds from the divestment of employer secu-
14 rities pursuant to this subsection, each of which
15 is diversified and has materially different risk
16 and return characteristics, and

17 “(B) the plan permits the applicable indi-
18 vidual to choose from any of the investment op-
19 tions made available under the plan to which
20 such proceeds may be so directed, subject to
21 such restrictions as may be provided by the
22 plan limiting such choice to periodic, reasonable
23 opportunities occurring no less frequently than
24 on a quarterly basis.

1 “(5) DEFINITIONS AND RULES.—For purposes
2 of this subsection—

3 “(A) APPLICABLE INDIVIDUAL ACCOUNT
4 PLAN.—The term ‘applicable individual account
5 plan’ means any individual account plan, except
6 that such term does not include an employee
7 stock ownership plan (within the meaning of
8 section 4975(e)(7) of the Internal Revenue
9 Code of 1986) unless there are any contribu-
10 tions to such plan (or earnings thereon) held
11 within such plan that are subject to subsection
12 (k)(3) or (m)(2) of section 401 of the Internal
13 Revenue Code of 1986.

14 “(B) APPLICABLE INDIVIDUAL.—The term
15 ‘applicable individual’ means—

16 “(i) any participant in the plan, and

17 “(ii) any beneficiary of a participant
18 referred to in clause (i) who has an ac-
19 count under the plan with respect to which
20 the beneficiary is entitled to exercise the
21 rights of the participant.

22 “(C) ELECTIVE DEFERRAL.—The term
23 ‘elective deferral’ means an employer contribu-
24 tion described in section 402(g)(3)(A) of the In-

1 ternal Revenue Code of 1986 (as in effect on
2 the date of the enactment of this subsection).

3 “(D) EMPLOYER SECURITY.—The term
4 ‘employer security’ shall have the meaning
5 given such term by section 407(d)(1) of this
6 Act (as in effect on the date of the enactment
7 of this subsection).

8 “(E) EMPLOYEE STOCK OWNERSHIP
9 PLAN.—The term ‘employee stock ownership
10 plan’ shall have the same meaning given to
11 such term by section 4975(e)(7) of the Internal
12 Revenue Code of 1986 (as in effect on the date
13 of the enactment of this subsection).

14 “(F) ELECTIONS.—Elections under this
15 subsection may be made not less frequently
16 than quarterly.

17 “(6) EXCEPTION WHERE THERE IS NO READILY
18 TRADABLE STOCK.—This subsection shall not apply
19 if there is no class of stock issued by the employer
20 (or by a corporation which is an affiliate of the em-
21 ployer (as defined in section 407(d)(7))) that is
22 readily tradable on an established securities market
23 (or in such other circumstances as may be deter-
24 mined jointly by the Secretary of Labor and the Sec-
25 retary of the Treasury in regulations).

1 “(7) TRANSITION RULE.—

2 “(A) IN GENERAL.—In the case of any in-
 3 dividual account plan which, on the first day of
 4 the first plan year to which this subsection ap-
 5 plies, holds employer securities of any class that
 6 were acquired before such date and on which
 7 there is a restriction on diversification otherwise
 8 precluded by this subsection, this subsection
 9 shall apply to such securities of such class held
 10 in any plan year only with respect to the num-
 11 ber of such securities equal to the applicable
 12 percentage of the total number of such securi-
 13 ties of such class held on such date.

14 “(B) APPLICABLE PERCENTAGE.—For
 15 purposes of subparagraph (A), the applicable
 16 percentage shall be as follows:

“Plan years for which provi- sions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

17 “(C) ELECTIVE DEFERRALS TREATED AS
 18 SEPARATE PLAN NOT INDIVIDUAL ACCOUNT
 19 PLAN.—For purposes of subparagraph (A), the
 20 applicable percentage shall be 100 percent with
 21 respect to—

1 “(i) employee contributions to a plan
2 under which any portion attributable to
3 elective deferrals is treated as a separate
4 plan under section 407(b)(2) as of the date
5 of the enactment of this paragraph, and

6 “(ii) such elective deferrals.

7 “(D) COORDINATION WITH PRIOR ELEC-
8 TIONS.—In any case in which a divestiture of
9 investment in employer securities of any class
10 held by an employee stock ownership plan prior
11 to the effective date of this subsection was un-
12 dertaken pursuant to other applicable Federal
13 law prior to such date, the applicable percent-
14 age (as determined without regard to this sub-
15 paragraph) in connection with such securities
16 shall be reduced to the extent necessary to ac-
17 count for the amount to which such election ap-
18 plied.

19 “(8) REGULATIONS.—The Secretary of the
20 Treasury shall prescribe regulations under this sub-
21 section in consultation with the Secretary of
22 Labor.”.

23 (b) AMENDMENTS TO THE INTERNAL REVENUE
24 CODE OF 1986.—

1 (1) IN GENERAL.—Section 401(a) of the Inter-
2 nal Revenue Code of 1986 (relating to requirements
3 for qualification) is amended by inserting after para-
4 graph (34) the following new paragraph:

5 “(35) DIVERSIFICATION REQUIREMENTS FOR
6 DEFINED CONTRIBUTION PLANS THAT HOLD EM-
7 PLOYER SECURITIES.—

8 “(A) IN GENERAL.—An applicable defined
9 contribution plan shall meet the requirements
10 of subparagraphs (B) and (C).

11 “(B) EMPLOYEE CONTRIBUTIONS AND
12 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
13 SECURITIES.—In the case of the portion of the
14 account attributable to employee contributions
15 and elective deferrals which is invested in em-
16 ployer securities, a plan meets the requirements
17 of this subparagraph if each applicable indi-
18 vidual in such plan may elect to direct the plan
19 to divest any such securities in the individual’s
20 account and to reinvest an equivalent amount
21 in other investment options which meet the re-
22 quirements of subparagraph (D).

23 “(C) EMPLOYER CONTRIBUTIONS IN-
24 VESTED IN EMPLOYER SECURITIES.—

1 “(i) IN GENERAL.—In the case of the
2 portion of the account attributable to em-
3 ployer contributions (other than elective
4 deferrals to which subparagraph (B) ap-
5 plies) which is invested in employer securi-
6 ties, a plan meets the requirements of this
7 subparagraph if, under the plan—

8 “(I) each applicable individual
9 with a benefit based on 3 years of
10 service may elect to direct the plan to
11 divest any such securities in the indi-
12 vidual’s account and to reinvest an
13 equivalent amount in other investment
14 options which meet the requirements
15 of subparagraph (D), or

16 “(II) with respect to any em-
17 ployer security allocated to an applica-
18 ble individual’s account during any
19 plan year, such applicable individual
20 may elect to direct the plan to divest
21 such employer security after a date
22 which is not later than 3 years after
23 the end of such plan year and to rein-
24 vest an equivalent amount in other in-

1 vestment options which meet the re-
2 quirements of subparagraph (D).

3 “(ii) APPLICABLE INDIVIDUAL WITH
4 BENEFIT BASED ON 3 YEARS OF SERV-
5 ICE.—For purposes of clause (i), an appli-
6 cable individual has a benefit based on 3
7 years of service if such individual would be
8 an applicable individual if only participants
9 in the plan who have completed at least 3
10 years of service (as determined under sec-
11 tion 411(a)) were referred to in subpara-
12 graph (E)(ii)(I).

13 “(D) INVESTMENT OPTIONS.—The require-
14 ments of this subparagraph are met if—

15 “(i) the plan offers not less than 3 in-
16 vestment options, other than employer se-
17 curities, to which an applicable individual
18 may direct the proceeds from the divest-
19 ment of employer securities pursuant to
20 this paragraph, each of which is diversified
21 and has materially different risk and re-
22 turn characteristics, and

23 “(ii) the plan permits the applicable
24 individual to choose from any of the invest-
25 ment options made available under the

1 plan to which such proceeds may be so di-
2 rected, subject to such restrictions as may
3 be provided by the plan limiting such
4 choice to periodic, reasonable opportunities
5 occurring no less frequently than on a
6 quarterly basis.

7 “(E) DEFINITIONS AND RULES.—For pur-
8 poses of this paragraph—

9 “(i) APPLICABLE DEFINED CONTRIBU-
10 TION PLAN.—The term ‘applicable defined
11 contribution plan’ means any defined con-
12 tribution plan, except that such term does
13 not include an employee stock ownership
14 plan (within the meaning of section
15 4975(e)(7)) unless there are any contribu-
16 tions to such plan (or earnings thereon)
17 held within such plan that are subject to
18 subsection (k)(3) or (m)(2).

19 “(ii) APPLICABLE INDIVIDUAL.—The
20 term ‘applicable individual’ means—

21 “(I) any participant in the plan,
22 and

23 “(II) any beneficiary of a partici-
24 pant referred to in clause (i) who has
25 an account under the plan with re-

1 spect to which the beneficiary is enti-
2 tled to exercise the rights of the par-
3 ticipant.

4 “(iii) ELECTIVE DEFERRAL.—The
5 term ‘elective deferral’ means an employer
6 contribution described in section
7 402(g)(3)(A) (as in effect on the date of
8 the enactment of this paragraph).

9 “(iv) EMPLOYER SECURITY.—The
10 term ‘employer security’ shall have the
11 meaning given such term by section
12 407(d)(1) of the Employee Retirement In-
13 come Security Act of 1974 (as in effect on
14 the date of the enactment of this para-
15 graph).

16 “(v) EMPLOYEE STOCK OWNERSHIP
17 PLAN.—The term ‘employee stock owner-
18 ship plan’ shall have the same meaning
19 given to such term by section 4975(e)(7)
20 of the Internal Revenue Code of 1986 (as
21 in effect on the date of the enactment of
22 this paragraph).

23 “(vi) ELECTIONS.—Elections under
24 this paragraph may be made not less fre-
25 quently than quarterly.

1 “(F) EXCEPTION WHERE THERE IS NO
2 READILY TRADABLE STOCK.—This paragraph
3 shall not apply if there is no class of stock
4 issued by the employer that is readily tradable
5 on an established securities market (or in such
6 other circumstances as may be determined
7 jointly by the Secretary of the Treasury and the
8 Secretary of Labor in regulations).

9 “(G) TRANSITION RULE.—

10 “(i) IN GENERAL.—In the case of any
11 defined contribution plan which, on the ef-
12 fective date of this subsection, holds em-
13 ployer securities of any class that were ac-
14 quired before such date and on which there
15 is a restriction on diversification otherwise
16 precluded by this paragraph, this para-
17 graph shall apply to such securities of such
18 class held in any plan year only with re-
19 spect to the number of such securities
20 equal to the applicable percentage of the
21 total number of such securities of such
22 class held on such date.

23 “(ii) APPLICABLE PERCENTAGE.—For
24 purposes of clause (i), the applicable per-
25 centage shall be as follows:

“Plan years for which provisions are effective: Applicable percentage:

1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

1 “(iii) ELECTIVE DEFERRALS TREATED
2 AS SEPARATE PLAN NOT INDIVIDUAL AC-
3 COUNT PLAN.—For purposes of clause (i),
4 the applicable percentage shall be 100 per-
5 cent with respect to—

6 “(I) employee contributions to a
7 plan under which any portion attrib-
8 utable to elective deferrals is treated
9 as a separate plan under section
10 407(b)(2) of the Employee Retirement
11 Income Security Act of 1974 as of the
12 date of the enactment of this para-
13 graph, and

14 “(II) such elective deferrals.

15 “(iv) CONTRIBUTIONS HELD WITHIN
16 AN ESOP.—In the case of contributions
17 (other than elective deferrals and employee
18 contributions) held within an employee
19 stock ownership plan, in the case of the 1st
20 and 2nd plan years referred to in the table
21 in clause (ii), the applicable percentage
22 shall be the greater of the amount deter-

1 mined under clause (ii) or the percentage
2 determined under paragraph (28) (deter-
3 mined as if paragraph (28) applied to a
4 plan described in this paragraph).

5 “(v) COORDINATION WITH PRIOR
6 ELECTIONS UNDER PARAGRAPH (28).—In
7 any case in which a divestiture of invest-
8 ment in employer securities of any class
9 held by an employee stock ownership plan
10 prior to the effective date of this para-
11 graph was undertaken pursuant to an elec-
12 tion under paragraph (28) prior to such
13 date, the applicable percentage (as deter-
14 mined without regard to this clause) in
15 connection with such securities shall be re-
16 duced to the extent necessary to account
17 for the amount to which such election ap-
18 plied.

19 “(H) REGULATIONS.—The Secretary shall
20 prescribe regulations under this paragraph in
21 consultation with the Secretary of Labor.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 401(a)(28) of such Code is
24 amended by adding at the end the following
25 new subparagraph:

1 “(D) APPLICATION.—This paragraph shall
2 not apply to a plan to which paragraph (35) ap-
3 plies.”.

4 (B) Section 409(h)(7) of such Code is
5 amended by inserting before the period at the
6 end “or subparagraph (B) or (C) of section
7 401(a)(35)”.

8 (C) Section 4980(c)(3)(A) of such Code is
9 amended by striking “if—” and all that follows
10 and inserting “if the requirements of subpara-
11 graphs (B), (C), and (D) are met.”.

12 (c) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2) and section 108, the amendments made by
15 this section shall apply to plan years beginning after
16 December 31, 2003, and with respect to employer
17 securities allocated to accounts before, on, or after
18 the date of the enactment of this Act.

19 (2) EXCEPTION.—The amendments made by
20 this section shall not apply to employer securities
21 held by an employee stock ownership plan which are
22 acquired before January 1, 1987.

1 **SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE**
2 **PROVISION OF INVESTMENT ADVICE.**

3 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
4 INCOME SECURITY ACT OF 1974.—

5 (1) EXEMPTION FROM PROHIBITED TRANS-
6 ACTIONS.—Section 408(b) of the Employee Retire-
7 ment Income Security Act of 1974 (29 U.S.C.
8 1108(b)) is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(14)(A) Any transaction described in subpara-
11 graph (B) in connection with the provision of invest-
12 ment advice described in section 3(21)(A)(ii), in any
13 case in which—

14 “(i) the investment of assets of the plan is
15 subject to the direction of plan participants or
16 beneficiaries,

17 “(ii) the advice is provided to the plan or
18 a participant or beneficiary of the plan by a fi-
19 duciary adviser in connection with any sale, ac-
20 quisition, or holding of a security or other prop-
21 erty for purposes of investment of plan assets,
22 and

23 “(iii) the requirements of subsection (g)
24 are met in connection with the provision of the
25 advice.

1 “(B) The transactions described in this sub-
2 paragraph are the following:

3 “(i) the provision of the advice to the plan,
4 participant, or beneficiary;

5 “(ii) the sale, acquisition, or holding of a
6 security or other property (including any lend-
7 ing of money or other extension of credit associ-
8 ated with the sale, acquisition, or holding of a
9 security or other property) pursuant to the ad-
10 vice; and

11 “(iii) the direct or indirect receipt of fees
12 or other compensation by the fiduciary adviser
13 or an affiliate thereof (or any employee, agent,
14 or registered representative of the fiduciary ad-
15 viser or affiliate) in connection with the provi-
16 sion of the advice or in connection with a sale,
17 acquisition, or holding of a security or other
18 property pursuant to the advice.”.

19 (2) REQUIREMENTS.—Section 408 of such Act
20 is amended further by adding at the end the fol-
21 lowing new subsection:

22 “(g) REQUIREMENTS RELATING TO PROVISION OF
23 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

24 “(1) IN GENERAL.—The requirements of this
25 subsection are met in connection with the provision

1 of investment advice referred to in section
2 3(21)(A)(ii), provided to an employee benefit plan or
3 a participant or beneficiary of an employee benefit
4 plan by a fiduciary adviser with respect to the plan
5 in connection with any sale, acquisition, or holding
6 of a security or other property for purposes of in-
7 vestment of amounts held by the plan, if—

8 “(A) in the case of the initial provision of
9 the advice with regard to the security or other
10 property by the fiduciary adviser to the plan,
11 participant, or beneficiary, the fiduciary adviser
12 provides to the recipient of the advice, at a time
13 reasonably contemporaneous with the initial
14 provision of the advice, a written notification
15 (which may consist of notification by means of
16 electronic communication)—

17 “(i) of all fees or other compensation
18 relating to the advice that the fiduciary ad-
19 viser or any affiliate thereof is to receive
20 (including compensation provided by any
21 third party) in connection with the provi-
22 sion of the advice or in connection with the
23 sale, acquisition, or holding of the security
24 or other property,

1 “(ii) of any material affiliation or con-
2 tractual relationship of the fiduciary ad-
3 viser or affiliates thereof in the security or
4 other property,

5 “(iii) of any limitation placed on the
6 scope of the investment advice to be pro-
7 vided by the fiduciary adviser with respect
8 to any such sale, acquisition, or holding of
9 a security or other property,

10 “(iv) of the types of services provided
11 by the fiduciary adviser in connection with
12 the provision of investment advice by the
13 fiduciary adviser,

14 “(v) that the adviser is acting as a fi-
15 duciary of the plan in connection with the
16 provision of the advice, and

17 “(vi) that a recipient of the advice
18 may separately arrange for the provision of
19 advice by another adviser, that could have
20 no material affiliation with and receive no
21 fees or other compensation in connection
22 with the security or other property,

23 “(B) the fiduciary adviser provides appro-
24 priate disclosure, in connection with the sale,
25 acquisition, or holding of the security or other

1 property, in accordance with all applicable secu-
2 rities laws,

3 “(C) the sale, acquisition, or holding oc-
4 curs solely at the direction of the recipient of
5 the advice,

6 “(D) the compensation received by the fi-
7 duciary adviser and affiliates thereof in connec-
8 tion with the sale, acquisition, or holding of the
9 security or other property is reasonable, and

10 “(E) the terms of the sale, acquisition, or
11 holding of the security or other property are at
12 least as favorable to the plan as an arm’s
13 length transaction would be.

14 “(2) STANDARDS FOR PRESENTATION OF IN-
15 FORMATION.—

16 “(A) IN GENERAL.—The notification re-
17 quired to be provided to participants and bene-
18 ficiaries under paragraph (1)(A) shall be writ-
19 ten in a clear and conspicuous manner and in
20 a manner calculated to be understood by the av-
21 erage plan participant and shall be sufficiently
22 accurate and comprehensive to reasonably ap-
23 prise such participants and beneficiaries of the
24 information required to be provided in the noti-
25 fication.

1 “(B) MODEL FORM FOR DISCLOSURE OF
2 FEES AND OTHER COMPENSATION.—The Sec-
3 retary shall issue a model form for the disclo-
4 sure of fees and other compensation required in
5 paragraph (1)(A)(i) which meets the require-
6 ments of subparagraph (A).

7 “(3) EXEMPTION CONDITIONED ON MAKING RE-
8 QUIRED INFORMATION AVAILABLE ANNUALLY, ON
9 REQUEST, AND IN THE EVENT OF MATERIAL
10 CHANGE.—The requirements of paragraph (1)(A)
11 shall be deemed not to have been met in connection
12 with the initial or any subsequent provision of advice
13 described in paragraph (1) to the plan, participant,
14 or beneficiary if, at any time during the provision of
15 advisory services to the plan, participant, or bene-
16 ficiary, the fiduciary adviser fails to maintain the in-
17 formation described in clauses (i) through (iv) of
18 subparagraph (A) in currently accurate form and in
19 the manner described in paragraph (2) or fails—

20 “(A) to provide, without charge, such cur-
21 rently accurate information to the recipient of
22 the advice no less than annually,

23 “(B) to make such currently accurate in-
24 formation available, upon request and without
25 charge, to the recipient of the advice, or

1 “(C) in the event of a material change to
2 the information described in clauses (i) through
3 (iv) of paragraph (1)(A), to provide, without
4 charge, such currently accurate information to
5 the recipient of the advice at a time reasonably
6 contemporaneous to the material change in in-
7 formation.

8 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
9 OF COMPLIANCE.—A fiduciary adviser referred to in
10 paragraph (1) who has provided advice referred to in
11 such paragraph shall, for a period of not less than
12 6 years after the provision of the advice, maintain
13 any records necessary for determining whether the
14 requirements of the preceding provisions of this sub-
15 section and of subsection (b)(14) have been met. A
16 transaction prohibited under section 406 shall not be
17 considered to have occurred solely because the
18 records are lost or destroyed prior to the end of the
19 6-year period due to circumstances beyond the con-
20 trol of the fiduciary adviser.

21 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
22 TAIN OTHER FIDUCIARIES.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), a plan sponsor or other person who
25 is a fiduciary (other than a fiduciary adviser)

1 shall not be treated as failing to meet the re-
2 quirements of this part solely by reason of the
3 provision of investment advice referred to in
4 section 3(21)(A)(ii) (or solely by reason of con-
5 tracting for or otherwise arranging for the pro-
6 vision of the advice), if—

7 “(i) the advice is provided by a fidu-
8 ciary adviser pursuant to an arrangement
9 between the plan sponsor or other fidu-
10 ciary and the fiduciary adviser for the pro-
11 vision by the fiduciary adviser of invest-
12 ment advice referred to in such section,

13 “(ii) the terms of the arrangement re-
14 quire compliance by the fiduciary adviser
15 with the requirements of this subsection,
16 and

17 “(iii) the terms of the arrangement
18 include a written acknowledgment by the
19 fiduciary adviser that the fiduciary adviser
20 is a fiduciary of the plan with respect to
21 the provision of the advice.

22 “(B) CONTINUED DUTY OF PRUDENT SE-
23 LECTION OF ADVISER AND PERIODIC REVIEW.—
24 Nothing in subparagraph (A) shall be construed
25 to exempt a plan sponsor or other person who

1 is a fiduciary from any requirement of this part
2 for the prudent selection and periodic review of
3 a fiduciary adviser with whom the plan sponsor
4 or other person enters into an arrangement for
5 the provision of advice referred to in section
6 3(21)(A)(ii). The plan sponsor or other person
7 who is a fiduciary has no duty under this part
8 to monitor the specific investment advice given
9 by the fiduciary adviser to any particular recipi-
10 ent of the advice.

11 “(C) AVAILABILITY OF PLAN ASSETS FOR
12 PAYMENT FOR ADVICE.—Nothing in this part
13 shall be construed to preclude the use of plan
14 assets to pay for reasonable expenses in pro-
15 viding investment advice referred to in section
16 3(21)(A)(ii).

17 “(6) DEFINITIONS.—For purposes of this sub-
18 section and subsection (b)(14)—

19 “(A) FIDUCIARY ADVISER.—The term ‘fi-
20 duciary adviser’ means, with respect to a plan,
21 a person who is a fiduciary of the plan by rea-
22 son of the provision of investment advice by the
23 person to the plan or to a participant or bene-
24 ficiary and who is—

1 “(i) registered as an investment ad-
2 viser under the Investment Advisers Act of
3 1940 (15 U.S.C. 80b–1 et seq.) or under
4 the laws of the State in which the fiduciary
5 maintains its principal office and place of
6 business,

7 “(ii) a bank or similar financial insti-
8 tution referred to in section 408(b)(4) or a
9 savings association (as defined in section
10 3(b)(1) of the Federal Deposit Insurance
11 Act (12 U.S.C. 1813(b)(1))), but only if
12 the advice is provided through a trust de-
13 partment of the bank or similar financial
14 institution or savings association which is
15 subject to periodic examination and review
16 by Federal or State banking authorities,

17 “(iii) an insurance company qualified
18 to do business under the laws of a State,

19 “(iv) a person registered as a broker
20 or dealer under the Securities Exchange
21 Act of 1934 (15 U.S.C. 78a et seq.),

22 “(v) an affiliate of a person described
23 in any of clauses (i) through (iv), or

24 “(vi) an employee, agent, or registered
25 representative of a person described in any

1 of clauses (i) through (v) who satisfies the
2 requirements of applicable insurance,
3 banking, and securities laws relating to the
4 provision of the advice.

5 “(B) AFFILIATE.—The term ‘affiliate’ of
6 another entity means an affiliated person of the
7 entity (as defined in section 2(a)(3) of the In-
8 vestment Company Act of 1940 (15 U.S.C.
9 80a–2(a)(3))).

10 “(C) REGISTERED REPRESENTATIVE.—
11 The term ‘registered representative’ of another
12 entity means a person described in section
13 3(a)(18) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78c(a)(18)) (substituting the
15 entity for the broker or dealer referred to in
16 such section) or a person described in section
17 202(a)(17) of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
19 the entity for the investment adviser referred to
20 in such section).”.

21 (b) AMENDMENTS TO THE INTERNAL REVENUE
22 CODE OF 1986.—

23 (1) EXEMPTION FROM PROHIBITED TRANS-
24 ACTIONS.—Subsection (d) of section 4975 of the In-

1 ternal Revenue Code of 1986 (relating to exemptions
2 from tax on prohibited transactions) is amended—

3 (A) in paragraph (14), by striking “or” at
4 the end;

5 (B) in paragraph (15), by striking the pe-
6 riod at the end and inserting “; or”; and

7 (C) by adding at the end the following new
8 paragraph:

9 “(16) any transaction described in subsection
10 (f)(7)(A) in connection with the provision of invest-
11 ment advice described in subsection (e)(3)(B)(i), in
12 any case in which—

13 “(A) the investment of assets of the plan
14 is subject to the direction of plan participants
15 or beneficiaries,

16 “(B) the advice is provided to the plan or
17 a participant or beneficiary of the plan by a fi-
18 duciary adviser in connection with any sale, ac-
19 quisition, or holding of a security or other prop-
20 erty for purposes of investment of plan assets,
21 and

22 “(C) the requirements of subsection
23 (f)(7)(B) are met in connection with the provi-
24 sion of the advice.”.

1 (2) ALLOWED TRANSACTIONS AND REQUIRE-
2 MENTS.—Subsection (f) of such section 4975 (relat-
3 ing to other definitions and special rules) is amended
4 by adding at the end the following new paragraph:

5 “(7) PROVISIONS RELATING TO INVESTMENT
6 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

7 “(A) TRANSACTIONS ALLOWABLE IN CON-
8 NECTION WITH INVESTMENT ADVICE PROVIDED
9 BY FIDUCIARY ADVISERS.—The transactions re-
10 ferred to in subsection (d)(16), in connection
11 with the provision of investment advice by a fi-
12 duciary adviser, are the following:

13 “(i) the provision of the advice to the
14 plan, participant, or beneficiary;

15 “(ii) the sale, acquisition, or holding
16 of a security or other property (including
17 any lending of money or other extension of
18 credit associated with the sale, acquisition,
19 or holding of a security or other property)
20 pursuant to the advice; and

21 “(iii) the direct or indirect receipt of
22 fees or other compensation by the fiduciary
23 adviser or an affiliate thereof (or any em-
24 ployee, agent, or registered representative
25 of the fiduciary adviser or affiliate) in con-

1 nection with the provision of the advice or
2 in connection with a sale, acquisition, or
3 holding of a security or other property pur-
4 suant to the advice.

5 “(B) REQUIREMENTS RELATING TO PROVI-
6 SION OF INVESTMENT ADVICE BY FIDUCIARY
7 ADVISERS.—The requirements of this subpara-
8 graph (referred to in subsection (d)(16)(C)) are
9 met in connection with the provision of invest-
10 ment advice referred to in subsection (e)(3)(B),
11 provided to a plan or a participant or bene-
12 ficiary of a plan by a fiduciary adviser with re-
13 spect to the plan in connection with any sale,
14 acquisition, or holding of a security or other
15 property for purposes of investment of amounts
16 held by the plan, if—

17 “(i) in the case of the initial provision
18 of the advice with regard to the security or
19 other property by the fiduciary adviser to
20 the plan, participant, or beneficiary, the fi-
21 duciary adviser provides to the recipient of
22 the advice, at a time reasonably contem-
23 poraneous with the initial provision of the
24 advice, a written notification (which may

1 consist of notification by means of elec-
2 tronic communication)—

3 “(I) of all fees or other com-
4 pensation relating to the advice that
5 the fiduciary adviser or any affiliate
6 thereof is to receive (including com-
7 pensation provided by any third
8 party) in connection with the provi-
9 sion of the advice or in connection
10 with the sale, acquisition, or holding
11 of the security or other property,

12 “(II) of any material affiliation
13 or contractual relationship of the fidu-
14 ciary adviser or affiliates thereof in
15 the security or other property,

16 “(III) of any limitation placed on
17 the scope of the investment advice to
18 be provided by the fiduciary adviser
19 with respect to any such sale, acquisi-
20 tion, or holding of a security or other
21 property,

22 “(IV) of the types of services
23 provided by the fiduciary adviser in
24 connection with the provision of in-

1 vestment advice by the fiduciary ad-
2 viser,

3 “(V) that the adviser is acting as
4 a fiduciary of the plan in connection
5 with the provision of the advice, and

6 “(VI) that a recipient of the ad-
7 vice may separately arrange for the
8 provision of advice by another adviser,
9 that could have no material affiliation
10 with and receive no fees or other com-
11 pensation in connection with the secu-
12 rity or other property,

13 “(ii) the fiduciary adviser provides ap-
14 propriate disclosure, in connection with the
15 sale, acquisition, or holding of the security
16 or other property, in accordance with all
17 applicable securities laws,

18 “(iii) the sale, acquisition, or holding
19 occurs solely at the direction of the recipi-
20 ent of the advice,

21 “(iv) the compensation received by the
22 fiduciary adviser and affiliates thereof in
23 connection with the sale, acquisition, or
24 holding of the security or other property is
25 reasonable, and

1 “(v) the terms of the sale, acquisition,
2 or holding of the security or other property
3 are at least as favorable to the plan as an
4 arm’s length transaction would be.

5 “(C) STANDARDS FOR PRESENTATION OF
6 INFORMATION.—The notification required to be
7 provided to participants and beneficiaries under
8 subparagraph (B)(i) shall be written in a clear
9 and conspicuous manner and in a manner cal-
10 culated to be understood by the average plan
11 participant and shall be sufficiently accurate
12 and comprehensive to reasonably apprise such
13 participants and beneficiaries of the information
14 required to be provided in the notification.

15 “(D) EXEMPTION CONDITIONED ON MAK-
16 ING REQUIRED INFORMATION AVAILABLE ANNU-
17 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
18 TERIAL CHANGE.—The requirements of sub-
19 paragraph (B)(i) shall be deemed not to have
20 been met in connection with the initial or any
21 subsequent provision of advice described in sub-
22 paragraph (B) to the plan, participant, or bene-
23 ficiary if, at any time during the provision of
24 advisory services to the plan, participant, or
25 beneficiary, the fiduciary adviser fails to main-

1 tain the information described in subclauses (I)
2 through (IV) of subparagraph (B)(i) in cur-
3 rently accurate form and in the manner re-
4 quired by subparagraph (C), or fails—

5 “(i) to provide, without charge, such
6 currently accurate information to the re-
7 cipient of the advice no less than annually,

8 “(ii) to make such currently accurate
9 information available, upon request and
10 without charge, to the recipient of the ad-
11 vice, or

12 “(iii) in the event of a material
13 change to the information described in
14 subclauses (I) through (IV) of subpara-
15 graph (B)(i), to provide, without charge,
16 such currently accurate information to the
17 recipient of the advice at a time reasonably
18 contemporaneous to the material change in
19 information.

20 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
21 DENCE OF COMPLIANCE.—A fiduciary adviser
22 referred to in subparagraph (B) who has pro-
23 vided advice referred to in such subparagraph
24 shall, for a period of not less than 6 years after
25 the provision of the advice, maintain any

1 records necessary for determining whether the
2 requirements of the preceding provisions of this
3 paragraph and of subsection (d)(16) have been
4 met. A transaction prohibited under subsection
5 (c)(1) shall not be considered to have occurred
6 solely because the records are lost or destroyed
7 prior to the end of the 6-year period due to cir-
8 cumstances beyond the control of the fiduciary
9 adviser.

10 “(F) EXEMPTION FOR PLAN SPONSOR AND
11 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
12 or other person who is a fiduciary (other than
13 a fiduciary adviser) shall not be treated as fail-
14 ing to meet the requirements of this section
15 solely by reason of the provision of investment
16 advice referred to in subsection (e)(3)(B) (or
17 solely by reason of contracting for or otherwise
18 arranging for the provision of the advice), if—

19 “(i) the advice is provided by a fidu-
20 ciary adviser pursuant to an arrangement
21 between the plan sponsor or other fidu-
22 ciary and the fiduciary adviser for the pro-
23 vision by the fiduciary adviser of invest-
24 ment advice referred to in such section,

1 “(ii) the terms of the arrangement re-
2 quire compliance by the fiduciary adviser
3 with the requirements of this paragraph,

4 “(iii) the terms of the arrangement
5 include a written acknowledgment by the
6 fiduciary adviser that the fiduciary adviser
7 is a fiduciary of the plan with respect to
8 the provision of the advice, and

9 “(iv) the requirements of part 4 of
10 subtitle B of title I of the Employee Re-
11 tirement Income Security Act of 1974 are
12 met in connection with the provision of
13 such advice.

14 “(G) DEFINITIONS.—For purposes of this
15 paragraph and subsection (d)(16)—

16 “(i) FIDUCIARY ADVISER.—The term
17 ‘fiduciary adviser’ means, with respect to a
18 plan, a person who is a fiduciary of the
19 plan by reason of the provision of invest-
20 ment advice by the person to the plan or
21 to a participant or beneficiary and who
22 is—

23 “(I) registered as an investment
24 adviser under the Investment Advisers
25 Act of 1940 (15 U.S.C. 80b–1 et seq.)

1 or under the laws of the State in
2 which the fiduciary maintains its prin-
3 cipal office and place of business,

4 “(II) a bank or similar financial
5 institution referred to in subsection
6 (d)(4) or a savings association (as de-
7 fined in section 3(b)(1) of the Federal
8 Deposit Insurance Act (12 U.S.C.
9 1813(b)(1))), but only if the advice is
10 provided through a trust department
11 of the bank or similar financial insti-
12 tution or savings association which is
13 subject to periodic examination and
14 review by Federal or State banking
15 authorities,

16 “(III) an insurance company
17 qualified to do business under the
18 laws of a State,

19 “(IV) a person registered as a
20 broker or dealer under the Securities
21 Exchange Act of 1934 (15 U.S.C. 78a
22 et seq.),

23 “(V) an affiliate of a person de-
24 scribed in any of subclauses (I)
25 through (IV), or

1 “(VI) an employee, agent, or reg-
2 istered representative of a person de-
3 scribed in any of subclauses (I)
4 through (V) who satisfies the require-
5 ments of applicable insurance, bank-
6 ing, and securities laws relating to the
7 provision of the advice.

8 “(ii) AFFILIATE.—The term ‘affiliate’
9 of another entity means an affiliated per-
10 son of the entity (as defined in section
11 2(a)(3) of the Investment Company Act of
12 1940 (15 U.S.C. 80a-2(a)(3))).

13 “(iii) REGISTERED REPRESENTA-
14 TIVE.—The term ‘registered representa-
15 tive’ of another entity means a person de-
16 scribed in section 3(a)(18) of the Securi-
17 ties Exchange Act of 1934 (15 U.S.C.
18 78c(a)(18)) (substituting the entity for the
19 broker or dealer referred to in such sec-
20 tion) or a person described in section
21 202(a)(17) of the Investment Advisers Act
22 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
23 stituting the entity for the investment ad-
24 viser referred to in such section).”.

1 **SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT**
2 **SAVINGS OF PARTICIPANTS AND BENE-**
3 **FICIARIES BY REQUIRING CONSULTANTS TO**
4 **ADVISE PLAN FIDUCIARIES OF INDIVIDUAL**
5 **ACCOUNT PLANS.**

6 (a) STUDY.—As soon as practicable after the date of
7 the enactment of this Act, the Secretary of Labor shall
8 undertake a study of the costs and benefits to participants
9 and beneficiaries of requiring independent consultants to
10 advise plan fiduciaries in connection with individual ac-
11 count plans. In conducting such study, the Secretary shall
12 consider—

13 (1) the benefits to plan participants and bene-
14 ficiaries of engaging independent advisers to provide
15 investment and other advice regarding the assets of
16 the plan to persons who have fiduciary duties with
17 respect to the management or disposition of such as-
18 sets,

19 (2) the extent to which independent advisers
20 are currently retained by plan fiduciaries,

21 (3) the availability of assistance to fiduciaries
22 from appropriate Federal agencies,

23 (4) the availability of qualified independent con-
24 sultants to serve the needs of individual account
25 plan fiduciaries in the United States,

1 (5) the impact of the additional fiduciary duty
2 of an independent advisor on the strict fiduciary ob-
3 ligations of plan fiduciaries,

4 (6) the impact of new requirements (consulting
5 fees, reporting requirements, and new plan duties to
6 prudently identify and contract with qualified inde-
7 pendent consultants) on the availability of individual
8 account plans, and

9 (7) the impact of a new requirement on the
10 plan administration costs per participant for small
11 and mid-size employers and the pension plans they
12 sponsor.

13 (b) REPORT.—Not later than 1 year after the date
14 of the enactment of this Act, the Secretary of Labor shall
15 report the results of the study undertaken pursuant to this
16 section, together with any recommendations for legislative
17 changes, to the Committee on Education and the Work-
18 force of the House of Representatives and the Committee
19 on Health, Education, Labor, and Pensions of the Senate.

20 **SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
21 **NING SERVICES.**

22 (a) IN GENERAL.—Subsection (m) of section 132 of
23 the Internal Revenue Code of 1986 (defining qualified re-
24 tirement services) is amended by adding at the end the
25 following new paragraph:

1 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
2 shall be included in the gross income of any em-
3 ployee solely because the employee may choose be-
4 tween any qualified retirement planning services pro-
5 vided by a qualified investment advisor and com-
6 pensation which would otherwise be includible in the
7 gross income of such employee. The preceding sen-
8 tence shall apply to highly compensated employees
9 only if the choice described in such sentence is avail-
10 able on substantially the same terms to each mem-
11 ber of the group of employees normally provided
12 education and information regarding the employer’s
13 qualified employer plan.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 403(b)(3)(B) of such Code is
16 amended by inserting “132(m)(4),” after
17 “132(f)(4),”.

18 (2) Section 414(s)(2) of such Code is amended
19 by inserting “132(m)(4),” after “132(f)(4),”.

20 (3) Section 415(c)(3)(D)(ii) of such Code is
21 amended by inserting “132(m)(4),” after
22 “132(f)(4),”.

23 (c) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 December 31, 2003.

1 **SEC. 108. EFFECTIVE DATES AND RELATED RULES.**

2 (a) IN GENERAL.—Except as otherwise provided in
3 the preceding provisions of this title or in subsections (c)
4 and (d), the amendments made by this Act shall apply
5 with respect to plan years beginning on or after the gen-
6 eral effective date.

7 (b) GENERAL EFFECTIVE DATE.—For purposes of
8 this section, the term “general effective date” means the
9 date which is 1 year after the date of the enactment of
10 this Act.

11 (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED
12 PLANS.—In the case of a plan maintained pursuant to 1
13 or more collective bargaining agreements between em-
14 ployee representatives and 1 or more employers ratified
15 on or before the date of the enactment of this Act, sub-
16 section (a) shall be applied to benefits pursuant to, and
17 individuals covered by, any such agreement by substituting
18 for “the general effective date” the date of the commence-
19 ment of the first plan year beginning on or after the ear-
20 lier of—

21 (1) the later of—

22 (A) the date which is 1 year after the gen-
23 eral effective date, or

24 (B) the date on which the last of such col-
25 lective bargaining agreements terminates (de-
26 termined without regard to any extension there-

1 of after the date of the enactment of this Act),
2 or
3 (2) the date which is 2 years after the general
4 effective date.

5 (d) AMENDMENTS RELATING TO INVESTMENT AD-
6 VICE.—The amendments made by section 105 shall apply
7 with respect to advice referred to in section 3(21)(A)(ii)
8 of the Employee Retirement Income Security Act of 1974
9 or section 4975(c)(3)(B) of the Internal Revenue Code of
10 1986 provided on or after January 1, 2005.

11 **TITLE II—OTHER PROVISIONS** 12 **RELATING TO PENSIONS**

13 **SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT** 14 **OF 1994.**

15 (a) TRANSITION RULE MADE PERMANENT.—Para-
16 graph (1) of section 769(c) of the Retirement Protection
17 Act of 1994 is amended—

18 (1) by striking “transition” each place it ap-
19 pears in the heading and the text, and

20 (2) by striking “for any plan year beginning
21 after 1996 and before 2010”.

22 (b) SPECIAL RULES.—Paragraph (2) of section
23 769(c) of the Retirement Protection Act of 1994 is amend-
24 ed to read as follows:

1 “(2) SPECIAL RULES.—The rules described in
2 this paragraph are as follows:

3 “(A) For purposes of section 412(l)(9)(A)
4 of the Internal Revenue Code of 1986 and sec-
5 tion 302(d)(9)(A) of the Employee Retirement
6 Income Security Act of 1974, the funded cur-
7 rent liability percentage for any plan year shall
8 be treated as not less than 90 percent.

9 “(B) For purposes of section 412(m) of
10 the Internal Revenue Code of 1986 and section
11 302(e) of the Employee Retirement Income Se-
12 curity Act of 1974, the funded current liability
13 percentage for any plan year shall be treated as
14 not less than 100 percent.

15 “(C) For purposes of determining un-
16 funded vested benefits under section
17 4006(a)(3)(E)(iii) of the Employee Retirement
18 Income Security Act of 1974, the mortality
19 table shall be the mortality table used by the
20 plan.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to plan years beginning after De-
23 cember 31, 2002.

1 **SEC. 202. REPORTING SIMPLIFICATION.**

2 (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
3 OWNERS AND THEIR SPOUSES.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury and the Secretary of Labor shall modify the re-
6 quirements for filing annual returns with respect to
7 one-participant retirement plans to ensure that such
8 plans with assets of \$250,000 or less as of the close
9 of the plan year need not file a return for that year.

10 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
11 FINED.—For purposes of this subsection, the term
12 “one-participant retirement plan” means a retire-
13 ment plan with respect to which the following re-
14 quirements are met:

15 (A) on the first day of the plan year—

16 (i) the plan covered only one indi-
17 vidual (or the individual and the individ-
18 ual’s spouse) and the individual owned 100
19 percent of the plan sponsor (whether or
20 not incorporated), or

21 (ii) the plan covered only one or more
22 partners (or partners and their spouses) in
23 the plan sponsor;

24 (B) the plan meets the minimum coverage
25 requirements of section 410(b) of the Internal
26 Revenue Code of 1986 without being combined

1 with any other plan of the business that covers
2 the employees of the business;

3 (C) the plan does not provide benefits to
4 anyone except the individual (and the individ-
5 ual's spouse) or the partners (and their
6 spouses);

7 (D) the plan does not cover a business that
8 is a member of an affiliated service group, a
9 controlled group of corporations, or a group of
10 businesses under common control; and

11 (E) the plan does not cover a business that
12 leases employees.

13 (3) OTHER DEFINITIONS.—Terms used in para-
14 graph (2) which are also used in section 414 of the
15 Internal Revenue Code of 1986 shall have the re-
16 spective meanings given such terms by such section.

17 (4) EFFECTIVE DATE.—The provisions of this
18 subsection shall apply to plan years beginning on or
19 after January 1, 2003.

20 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
21 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
22 of plan years beginning after December 31, 2004, the Sec-
23 retary of the Treasury and the Secretary of Labor shall
24 provide for the filing of a simplified annual return for any
25 retirement plan which covers less than 25 employees on

1 the first day of a plan year and which meets the require-
2 ments described in subparagraphs (B), (D), and (E) of
3 subsection (a)(2).

4 **SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**
5 **ANCE RESOLUTION SYSTEM.**

6 The Secretary of the Treasury shall continue to up-
7 date and improve the Employee Plans Compliance Resolu-
8 tion System (or any successor program) giving special at-
9 tention to—

10 (1) increasing the awareness and knowledge of
11 small employers concerning the availability and use
12 of the program;

13 (2) taking into account special concerns and
14 circumstances that small employers face with respect
15 to compliance and correction of compliance failures;

16 (3) extending the duration of the self-correction
17 period under the Self-Correction Program for signifi-
18 cant compliance failures;

19 (4) expanding the availability to correct insig-
20 nificant compliance failures under the Self-Correc-
21 tion Program during audit; and

22 (5) assuring that any tax, penalty, or sanction
23 that is imposed by reason of a compliance failure is
24 not excessive and bears a reasonable relationship to
25 the nature, extent, and severity of the failure.

1 The Secretary of the Treasury shall have full authority
2 to effectuate the foregoing with respect to the Employee
3 Plans Compliance Resolution System (or any successor
4 program) and any other employee plans correction poli-
5 cies, including the authority to waive income, excise, or
6 other taxes to ensure that any tax, penalty, or sanction
7 is not excessive and bears a reasonable relationship to the
8 nature, extent, and severity of the failure.

9 **SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COV-**
10 **ERAGE, AND LINE OF BUSINESS RULES.**

11 (a) NONDISCRIMINATION.—

12 (1) IN GENERAL.—The Secretary of the Treas-
13 ury shall, by regulation, provide that a plan shall be
14 deemed to satisfy the requirements of section
15 401(a)(4) of the Internal Revenue Code of 1986 if
16 such plan satisfies the facts and circumstances test
17 under section 401(a)(4) of such Code, as in effect
18 before January 1, 1994, but only if—

19 (A) the plan satisfies conditions prescribed
20 by the Secretary to appropriately limit the
21 availability of such test; and

22 (B) the plan is submitted to the Secretary
23 for a determination of whether it satisfies such
24 test.

1 Subparagraph (B) shall only apply to the extent pro-
2 vided by the Secretary.

3 (2) EFFECTIVE DATES.—

4 (A) REGULATIONS.—The regulation re-
5 quired by paragraph (1) shall apply to years be-
6 ginning after December 31, 2004.

7 (B) CONDITIONS OF AVAILABILITY.—Any
8 condition of availability prescribed by the Sec-
9 retary under paragraph (1)(A) shall not apply
10 before the first year beginning not less than
11 120 days after the date on which such condition
12 is prescribed.

13 (b) COVERAGE TEST.—

14 (1) IN GENERAL.—Section 410(b)(1) of the In-
15 ternal Revenue Code of 1986 (relating to minimum
16 coverage requirements) is amended by adding at the
17 end the following:

18 “(D) In the case that the plan fails to
19 meet the requirements of subparagraphs (A),
20 (B) and (C), the plan—

21 “(i) satisfies subparagraph (B), as in
22 effect immediately before the enactment of
23 the Tax Reform Act of 1986,

1 “(ii) is submitted to the Secretary for
2 a determination of whether it satisfies the
3 requirement described in clause (i), and

4 “(iii) satisfies conditions prescribed by
5 the Secretary by regulation that appro-
6 priately limit the availability of this sub-
7 paragraph.

8 Clause (ii) shall apply only to the extent pro-
9 vided by the Secretary.”.

10 (2) EFFECTIVE DATES.—

11 (A) IN GENERAL.—The amendment made
12 by paragraph (1) shall apply to years beginning
13 after December 31, 2004.

14 (B) CONDITIONS OF AVAILABILITY.—Any
15 condition of availability prescribed by the Sec-
16 retary under regulations prescribed by the Sec-
17 retary under section 410(b)(1)(D) of the Inter-
18 nal Revenue Code of 1986 shall not apply be-
19 fore the first year beginning not less than 120
20 days after the date on which such condition is
21 prescribed.

22 (c) LINE OF BUSINESS RULES.—The Secretary of
23 the Treasury shall, on or before December 31, 2004, mod-
24 ify the existing regulations issued under section 414(r) of
25 the Internal Revenue Code of 1986 in order to expand

1 (to the extent that the Secretary determines appropriate)
2 the ability of a pension plan to demonstrate compliance
3 with the line of business requirements based upon the
4 facts and circumstances surrounding the design and oper-
5 ation of the plan, even though the plan is unable to satisfy
6 the mechanical tests currently used to determine compli-
7 ance.

8 **SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
9 **MORATORIUM ON APPLICATION OF CERTAIN**
10 **NONDISCRIMINATION RULES APPLICABLE TO**
11 **STATE AND LOCAL PLANS.**

12 (a) IN GENERAL.—

13 (1) Subparagraph (G) of section 401(a)(5) of
14 the Internal Revenue Code of 1986 and subpara-
15 graph (H) of section 401(a)(26) of such Code are
16 each amended by striking “section 414(d))” and all
17 that follows and inserting “section 414(d)).”.

18 (2) Subparagraph (G) of section 401(k)(3) of
19 the Internal Revenue Code of 1986 and paragraph
20 (2) of section 1505(d) of the Taxpayer Relief Act of
21 1997 are each amended by striking “maintained by
22 a State or local government or political subdivision
23 thereof (or agency or instrumentality thereof)”.

24 (b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) of such Code is amended to read as follows: “GOVERNMENTAL PLANS.—”.

(2) The heading for subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—”.

8 (3) Subparagraph (G) of section 401(k)(3) of
9 such Code is amended by inserting “GOVERN-
10 MENTAL PLANS.—” after “(G)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to years beginning after December 31, 2003.

14 SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DIS-
15 TRIBUTIONS.

16 (a) EXPANSION OF PERIOD.—

17 (1) AMENDMENT OF INTERNAL REVENUE
18 CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) of the Internal Revenue Code of 1986 is amended by striking “90-day” and inserting “180-day”.

(B) MODIFICATION OF REGULATIONS.—
The Secretary of the Treasury shall modify the
regulations under sections 402(f), 411(a)(11),

1 and 417 of the Internal Revenue Code of 1986
2 to substitute “180 days” for “90 days” each
3 place it appears in Treasury Regulations sec-
4 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–
5 1(b).

6 (2) AMENDMENT OF ERISA.—

7 (A) IN GENERAL.—Section 205(c)(7)(A) of
8 the Employee Retirement Income Security Act
9 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
10 by striking “90-day” and inserting “180-day”.

11 (B) MODIFICATION OF REGULATIONS.—

12 The Secretary of the Treasury shall modify the
13 regulations under part 2 of subtitle B of title
14 I of the Employee Retirement Income Security
15 Act of 1974 to the extent that they relate to
16 sections 203(e) and 205 of such Act to sub-
17 stitute “180 days” for “90 days” each place it
18 appears.

19 (3) EFFECTIVE DATE.—The amendments made
20 by paragraphs (1)(A) and (2)(A) and the modifica-
21 tions required by paragraphs (1)(B) and (2)(B)
22 shall apply to years beginning after December 31,
23 2003.

24 (b) CONSENT REGULATION INAPPLICABLE TO CER-
25 TAIN DISTRIBUTIONS.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall modify the regulations under section
3 411(a)(11) of the Internal Revenue Code of 1986
4 and under section 205 of the Employee Retirement
5 Income Security Act of 1974 to provide that the de-
6 scription of a participant's right, if any, to defer re-
7 ceipt of a distribution shall also describe the con-
8 sequences of failing to defer such receipt.

9 (2) EFFECTIVE DATE.—

10 (A) IN GENERAL.—The modifications re-
11 quired by paragraph (1) shall apply to years be-
12 ginning after December 31, 2003.

13 (B) REASONABLE NOTICE.—In the case of
14 any description of such consequences made be-
15 fore the date that is 90 days after the date on
16 which the Secretary of the Treasury issues a
17 safe harbor description under paragraph (1), a
18 plan shall not be treated as failing to satisfy the
19 requirements of section 411(a)(11) of such
20 Code or section 205 of such Act by reason of
21 the failure to provide the information required
22 by the modifications made under paragraph (1)
23 if the Administrator of such plan makes a rea-
24 sonable attempt to comply with such require-
25 ments.

1 **SEC. 207. ANNUAL REPORT DISSEMINATION.**

2 (a) REPORT AVAILABLE THROUGH ELECTRONIC
3 MEANS.—Section 104(b)(3) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is
5 amended by adding at the end the following new sentence:
6 “The requirement to furnish information under the pre-
7 vious sentence with respect to an employee pension benefit
8 plan shall be satisfied if the administrator makes such in-
9 formation reasonably available through electronic means
10 or other new technology.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to reports for years beginning after
13 December 31, 2003.

14 **SEC. 208. TECHNICAL CORRECTIONS TO SAVER ACT.**

15 Section 517 of the Employee Retirement Income Se-
16 curity Act of 1974 (29 U.S.C. 1147) is amended—

17 (1) in subsection (a), by striking “2001 and
18 2005 on or after September 1 of each year involved”
19 and inserting “2006 and 2010”;

20 (2) in subsection (e)(2)—

21 (A) by striking “Committee on Labor and
22 Human Resources” in subparagraph (D) and
23 inserting “Committee on Health, Education,
24 Labor, and Pensions”;

25 (B) by striking subparagraph (F) and in-
26 serting the following:

1 “(F) the Chairman and Ranking Member
2 of the Subcommittee on Labor, Health and
3 Human Services, and Education of the Com-
4 mittee on Appropriations of the House of Rep-
5 resentatives and the Chairman and Ranking
6 Member of the Subcommittee on Labor, Health
7 and Human Services, and Education of the
8 Committee on Appropriations of the Senate;”;

9 (C) by redesignating subparagraph (G) as
10 subparagraph (J); and

11 (D) by inserting after subparagraph (F)
12 the following new subparagraphs:

13 “(G) the Chairman and Ranking Member
14 of the Committee on Finance of the Senate;

15 “(H) the Chairman and Ranking Member
16 of the Committee on Ways and Means of the
17 House of Representatives;

18 “(I) the Chairman and Ranking Member
19 of the Subcommittee on Employer-Employee
20 Relations of the Committee on Education and
21 the Workforce of the House of Representatives;
22 and”;

23 (3) in subsection (e)(3)(B), by striking “Janu-
24 ary 31, 1998” and inserting “2 months before the
25 convening of each summit;”;

1 (4) in subsection (f)(1)(C), by inserting “, no
2 later than 60 days prior to the date of the com-
3 mencement of the National Summit,” after “com-
4 ment”;

5 (5) in subsection (i)—

6 (A) by striking “for fiscal years beginning
7 on or after October 1, 1997,”; and

8 (B) by adding at the end the following new
9 paragraph:

10 “(3) RECEPTION AND REPRESENTATION AU-
11 THORITY.—The Secretary is hereby granted recep-
12 tion and representation authority limited specifically
13 to the events at the National Summit. The Secretary
14 shall use any private contributions accepted in con-
15 nection with the National Summit prior to using
16 funds appropriated for purposes of the National
17 Summit pursuant to this paragraph.”; and

18 (6) in subsection (k)—

19 (A) by striking “shall enter into a contract
20 on a sole-source basis” and inserting “may
21 enter into a contract on a sole-source basis”;
22 and

23 (B) by striking “in fiscal year 1998”.

1 **SEC. 209. MISSING PARTICIPANTS.**

2 (a) IN GENERAL.—Section 4050 of the Employee Re-
3 tirement Income Security Act of 1974 (29 U.S.C. 1350)
4 is amended by redesignating subsection (c) as subsection
5 (e) and by inserting after subsection (b) the following new
6 subsections:

7 “(c) MULTIEMPLOYER PLANS.—The corporation
8 shall prescribe rules similar to the rules in subsection (a)
9 for multiemployer plans covered by this title that termi-
10 nate under section 4041A.

11 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

12 “(1) TRANSFER TO CORPORATION.—The plan
13 administrator of a plan described in paragraph (4)
14 may elect to transfer a missing participant’s benefits
15 to the corporation upon termination of the plan.

16 “(2) INFORMATION TO THE CORPORATION.—To
17 the extent provided in regulations, the plan adminis-
18 trator of a plan described in paragraph (4) shall,
19 upon termination of the plan, provide the corpora-
20 tion information with respect to benefits of a miss-
21 ing participant if the plan transfers such benefits—

22 “(A) to the corporation, or

23 “(B) to an entity other than the corpora-
24 tion or a plan described in paragraph (4)(B)(ii).

25 “(3) PAYMENT BY THE CORPORATION.—If ben-
26 efits of a missing participant were transferred to the

1 corporation under paragraph (1), the corporation
2 shall, upon location of the participant or beneficiary,
3 pay to the participant or beneficiary the amount
4 transferred (or the appropriate survivor benefit)
5 either—

6 “(A) in a single sum (plus interest), or

7 “(B) in such other form as is specified in
8 regulations of the corporation.

9 “(4) PLANS DESCRIBED.—A plan is described
10 in this paragraph if—

11 “(A) the plan is a pension plan (within the
12 meaning of section 3(2))—

13 “(i) to which the provisions of this
14 section do not apply (without regard to
15 this subsection), and

16 “(ii) which is not a plan described in
17 paragraphs (2) through (11) of section
18 4021(b), and

19 “(B) at the time the assets are to be dis-
20 tributed upon termination, the plan—

21 “(i) has missing participants, and

22 “(ii) has not provided for the transfer
23 of assets to pay the benefits of all missing
24 participants to another pension plan (with-
25 in the meaning of section 3(2)).

1 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
2 Subsections (a)(1) and (a)(3) shall not apply to a
3 plan described in paragraph (4).”.

4 (b) CONFORMING AMENDMENTS.—Section 206(f) of
5 such Act (29 U.S.C. 1056(f)) is amended—

6 (1) by striking “title IV” and inserting “section
7 4050”; and

8 (2) by striking “the plan shall provide that,”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to distributions made after final
11 regulations implementing subsections (c) and (d) of sec-
12 tion 4050 of the Employee Retirement Income Security
13 Act of 1974 (as added by subsection (a)), respectively, are
14 prescribed.

15 **SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
16 **SMALL EMPLOYERS.**

17 (a) IN GENERAL.—Subparagraph (A) of section
18 4006(a)(3) of the Employee Retirement Income Security
19 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

20 (1) in clause (i), by inserting “other than a new
21 single-employer plan (as defined in subparagraph
22 (F)) maintained by a small employer (as so de-
23 fined),” after “single-employer plan,”

24 (2) in clause (iii), by striking the period at the
25 end and inserting “, and”, and

1 (3) by adding at the end the following new
2 clause:

3 “(iv) in the case of a new single-employer plan
4 (as defined in subparagraph (F)) maintained by a
5 small employer (as so defined) for the plan year, \$5
6 for each individual who is a participant in such plan
7 during the plan year.”.

8 (b) DEFINITION OF NEW SINGLE-EMPLOYER
9 PLAN.—Section 4006(a)(3) of the Employee Retirement
10 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is
11 amended by adding at the end the following new subpara-
12 graph:

13 “(F)(i) For purposes of this paragraph, a single-em-
14 ployer plan maintained by a contributing sponsor shall be
15 treated as a new single-employer plan for each of its first
16 5 plan years if, during the 36-month period ending on the
17 date of the adoption of such plan, the sponsor or any
18 member of such sponsor’s controlled group (or any prede-
19 cessor of either) did not establish or maintain a plan to
20 which this title applies with respect to which benefits were
21 accrued for substantially the same employees as are in the
22 new single-employer plan.

23 “(ii)(I) For purposes of this paragraph, the term
24 ‘small employer’ means an employer which on the first day
25 of any plan year has, in aggregation with all members of

1 the controlled group of such employer, 100 or fewer em-
2 ployees.

3 “(II) In the case of a plan maintained by two or more
4 contributing sponsors that are not part of the same con-
5 trolled group, the employees of all contributing sponsors
6 and controlled groups of such sponsors shall be aggregated
7 for purposes of determining whether any contributing
8 sponsor is a small employer.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to plans first effective after Decem-
11 ber 31, 2003.

12 **SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
13 **NEW AND SMALL PLANS.**

14 (a) NEW PLANS.—Subparagraph (E) of section
15 4006(a)(3) of the Employee Retirement Income Security
16 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by
17 adding at the end the following new clause:

18 “(v) In the case of a new defined benefit plan, the
19 amount determined under clause (ii) for any plan year
20 shall be an amount equal to the product of the amount
21 determined under clause (ii) and the applicable percent-
22 age. For purposes of this clause, the term ‘applicable per-
23 centage’ means—

24 “(I) 0 percent, for the first plan year.

25 “(II) 20 percent, for the second plan year.

1 “(III) 40 percent, for the third plan year.

2 “(IV) 60 percent, for the fourth plan year.

3 “(V) 80 percent, for the fifth plan year.

4 For purposes of this clause, a defined benefit plan (as de-
5 fined in section 3(35)) maintained by a contributing spon-
6 sor shall be treated as a new defined benefit plan for each
7 of its first 5 plan years if, during the 36-month period
8 ending on the date of the adoption of the plan, the sponsor
9 and each member of any controlled group including the
10 sponsor (or any predecessor of either) did not establish
11 or maintain a plan to which this title applies with respect
12 to which benefits were accrued for substantially the same
13 employees as are in the new plan.”.

14 (b) SMALL PLANS.—Paragraph (3) of section
15 4006(a) of the Employee Retirement Income Security Act
16 of 1974 (29 U.S.C. 1306(a)), as amended by section
17 210(b), is amended—

18 (1) by striking “The” in subparagraph (E)(i)
19 and inserting “Except as provided in subparagraph
20 (G), the”, and

21 (2) by inserting after subparagraph (F) the fol-
22 lowing new subparagraph:

23 “(G)(i) In the case of an employer who has 25 or
24 fewer employees on the first day of the plan year, the addi-
25 tional premium determined under subparagraph (E) for

1 each participant shall not exceed \$5 multiplied by the
2 number of participants in the plan as of the close of the
3 preceding plan year.

4 “(ii) For purposes of clause (i), whether an employer
5 has 25 or fewer employees on the first day of the plan
6 year is determined by taking into consideration all of the
7 employees of all members of the contributing sponsor’s
8 controlled group. In the case of a plan maintained by two
9 or more contributing sponsors, the employees of all con-
10 tributing sponsors and their controlled groups shall be ag-
11 gregated for purposes of determining whether the 25-or-
12 fewer-employees limitation has been satisfied.”.

13 (c) EFFECTIVE DATES.—

14 (1) SUBSECTION (a).—The amendments made
15 by subsection (a) shall apply to plans first effective
16 after December 31, 2003.

17 (2) SUBSECTION (b).—The amendments made
18 by subsection (b) shall apply to plan years beginning
19 after December 31, 2003.

20 **SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
21 **PREMIUM OVERPAYMENT REFUNDS.**

22 (a) IN GENERAL.—Section 4007(b) of the Employ-
23 ment Retirement Income Security Act of 1974 (29 U.S.C.
24 1307(b)) is amended—

1 (1) by striking “(b)” and inserting “(b)(1)”,
2 and

3 (2) by inserting at the end the following new
4 paragraph:

5 “(2) The corporation is authorized to pay, subject to
6 regulations prescribed by the corporation, interest on the
7 amount of any overpayment of premium refunded to a des-
8 ignated payor. Interest under this paragraph shall be cal-
9 culated at the same rate and in the same manner as inter-
10 est is calculated for underpayments under paragraph
11 (1).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

16 SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED
17 PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
Section 4022(b)(5) of the Employee Retirement Income
Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
to read as follows:

“(5)(A) For purposes of this paragraph, the term ‘majority owner’ means an individual who, at any time during the 60-month period ending on the date the determination is being made—

1 “(i) owns the entire interest in an unincor-
2 porated trade or business,

3 “(ii) in the case of a partnership, is a partner
4 who owns, directly or indirectly, 50 percent or more
5 of either the capital interest or the profits interest
6 in such partnership, or

7 “(iii) in the case of a corporation, owns, directly
8 or indirectly, 50 percent or more in value of either
9 the voting stock of that corporation or all the stock
10 of that corporation.

11 For purposes of clause (iii), the constructive ownership
12 rules of section 1563(e) of the Internal Revenue Code of
13 1986 shall apply (determined without regard to section
14 1563(e)(3)(C)).

15 “(B) In the case of a participant who is a majority
16 owner, the amount of benefits guaranteed under this sec-
17 tion shall equal the product of—

18 “(i) a fraction (not to exceed 1) the numerator
19 of which is the number of years from the later of the
20 effective date or the adoption date of the plan to the
21 termination date, and the denominator of which is
22 10, and

23 “(ii) the amount of benefits that would be guar-
24 anteed under this section if the participant were not
25 a majority owner.”.

1 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

2 (1) Section 4044(a)(4)(B) of the Employee Re-
3 tirement Income Security Act of 1974 (29 U.S.C.
4 1344(a)(4)(B)) is amended by striking “section
5 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

6 (2) Section 4044(b) of such Act (29 U.S.C.
7 1344(b)) is amended—

8 (A) by striking “(5)” in paragraph (2) and
9 inserting “(4), (5),” and

10 (B) by redesignating paragraphs (3)
11 through (6) as paragraphs (4) through (7), re-
12 spectively, and by inserting after paragraph (2)
13 the following new paragraph:

14 “(3) If assets available for allocation under
15 paragraph (4) of subsection (a) are insufficient to
16 satisfy in full the benefits of all individuals who are
17 described in that paragraph, the assets shall be allo-
18 cated first to benefits described in subparagraph (A)
19 of that paragraph. Any remaining assets shall then
20 be allocated to benefits described in subparagraph
21 (B) of that paragraph. If assets allocated to such
22 subparagraph (B) are insufficient to satisfy in full
23 the benefits described in that subparagraph, the as-
24 sets shall be allocated pro rata among individuals on
25 the basis of the present value (as of the termination

1 date) of their respective benefits described in that
2 subparagraph.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 4021 of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C. 1321) is
6 amended—

7 (A) in subsection (b)(9), by striking “as
8 defined in section 4022(b)(6)”, and

9 (B) by adding at the end the following new
10 subsection:

11 “(d) For purposes of subsection (b)(9), the term ‘sub-
12 stantial owner’ means an individual who, at any time dur-
13 ing the 60-month period ending on the date the determina-
14 tion is being made—

15 “(1) owns the entire interest in an unincor-
16 porated trade or business,

17 “(2) in the case of a partnership, is a partner
18 who owns, directly or indirectly, more than 10 per-
19 cent of either the capital interest or the profits inter-
20 est in such partnership, or

21 “(3) in the case of a corporation, owns, directly
22 or indirectly, more than 10 percent in value of either
23 the voting stock of that corporation or all the stock
24 of that corporation.

1 For purposes of paragraph (3), the constructive ownership
2 rules of section 1563(e) of the Internal Revenue Code of
3 1986 shall apply (determined without regard to section
4 1563(e)(3)(C)).”.

5 (2) Section 4043(c)(7) of such Act (29 U.S.C.
6 1343(c)(7)) is amended by striking “section 4022(b)(6)”
7 and inserting “section 4021(d)”.

8 (d) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall apply to plan terminations—

12 (A) under section 4041(c) of the Employee
13 Retirement Income Security Act of 1974 (29
14 U.S.C. 1341(c)) with respect to which notices
15 of intent to terminate are provided under sec-
16 tion 4041(a)(2) of such Act (29 U.S.C.
17 1341(a)(2)) after December 31, 2003, and

18 (B) under section 4042 of such Act (29
19 U.S.C. 1342) with respect to which proceedings
20 are instituted by the corporation after such
21 date.

22 (2) CONFORMING AMENDMENTS.—The amend-
23 ments made by subsection (c) shall take effect on
24 January 1, 2004.

1 **SEC. 214. BENEFIT SUSPENSION NOTICE.**

2 (a) MODIFICATION OF REGULATION.—The Secretary
3 of Labor shall modify the regulation under subparagraph
4 (B) of section 203(a)(3) of the Employee Retirement In-
5 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to
6 provide that the notification required by such regulation
7 in connection with any suspension of benefits described in
8 such subparagraph—

9 (1) in the case of an employee who returns to
10 service described in section 203(a)(3)(B)(i) or (ii) of
11 such Act after commencement of payment of bene-
12 fits under the plan, shall be made during the first
13 calendar month or the first 4 or 5-week payroll pe-
14 riod ending in a calendar month in which the plan
15 withholds payments, and

16 (2) in the case of any employee who is not de-
17 scribed in paragraph (1)—

18 (A) may be included in the summary plan
19 description for the plan furnished in accordance
20 with section 104(b) of such Act (29 U.S.C.
21 1024(b)), rather than in a separate notice, and

22 (B) need not include a copy of the relevant
23 plan provisions.

24 (b) EFFECTIVE DATE.—The modification made
25 under this section shall apply to plan years beginning after
26 December 31, 2003.

1 **SEC. 215. STUDIES.**

2 (a) MODEL SMALL EMPLOYER GROUP PLANS
3 STUDY.—As soon as practicable after the date of the en-
4 actment of this Act, the Secretary of Labor, in consulta-
5 tion with the Secretary of the Treasury, shall conduct a
6 study to determine—

7 (1) the most appropriate form or forms of—

8 (A) employee pension benefit plans which
9 would—

10 (i) be simple in form and easily main-
11 tained by multiple small employers, and

12 (ii) provide for ready portability of
13 benefits for all participants and bene-
14 ficiaries,

15 (B) alternative arrangements providing
16 comparable benefits which may be established
17 by employee or employer associations, and

18 (C) alternative arrangements providing
19 comparable benefits to which employees may
20 contribute in a manner independent of employer
21 sponsorship, and

22 (2) appropriate methods and strategies for
23 making pension plan coverage described in para-
24 graph (1) more widely available to American work-
25 ers.

1 (b) MATTERS TO BE CONSIDERED.—In conducting
2 the study under subsection (a), the Secretary of Labor
3 shall consider the adequacy and availability of existing em-
4 ployee pension benefit plans and the extent to which exist-
5 ing models may be modified to be more accessible to both
6 employees and employers.

7 (c) REPORT.—Not later than 18 months after the
8 date of the enactment of this Act, the Secretary of Labor
9 shall report the results of the study under subsection (a),
10 together with the Secretary's recommendations, to the
11 Committee on Education and the Workforce and the Com-
12 mittee on Ways and Means of the House of Representa-
13 tives and the Committee on Health, Education, Labor,
14 and Pensions and the Committee on Finance of the Sen-
15 ate. Such recommendations shall include one or more
16 model plans described in subsection (a)(1)(A) and model
17 alternative arrangements described in subsections
18 (a)(1)(B) and (a)(1)(C) which may serve as the basis for
19 appropriate administrative or legislative action.

20 (d) STUDY ON EFFECT OF LEGISLATION.—Not later
21 than 5 years after the date of the enactment of this Act,
22 the Secretary of Labor shall submit to the Committee on
23 Education and the Workforce of the House of Representa-
24 tives and the Committee on Health, Education, Labor,
25 and Pensions of the Senate a report on the effect of the

1 provisions of this Act and title VI of the Economic Growth
2 and Tax Relief Reconciliation Act of 2001 on pension plan
3 coverage, including any change in—

4 (1) the extent of pension plan coverage for low
5 and middle-income workers,

6 (2) the levels of pension plan benefits generally,

7 (3) the quality of pension plan coverage gen-
8 erally,

9 (4) workers' access to and participation in pen-
10 sion plans, and

11 (5) retirement security.

12 **SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
13 **ING REQUIREMENTS.**

14 (a) IN GENERAL.—Subclause (III) of section
15 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is
16 amended—

17 (1) by striking “2002 or 2003” in the text and
18 inserting “2001, 2002, or 2003”, and

19 (2) by striking “2002 AND 2003” in the heading
20 and inserting “2001, 2002, AND 2003”.

21 (b) SPECIAL RULE.—Subclause (III) of section
22 302(d)(7)(C)(i) of the Employee Retirement Income Secu-
23 rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is
24 amended—

1 (1) by striking “2002 or 2003” in the text and
2 inserting “2001, 2002, or 2003”, and

3 (2) by striking “2002 AND 2003” in the heading
4 and inserting “2001, 2002, AND 2003”.

5 (c) PBGC.—Subclause (IV) of section
6 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
7 1306(a)(3)(E)(iii)) is amended to read as follows—

8 “(IV) In the case of plan years beginning after
9 December 31, 2001, and before January 1, 2004,
10 subclause (II) shall be applied by substituting ‘100
11 percent’ for ‘85 percent’ and by substituting ‘115
12 percent’ for ‘100 percent’. Subclause (III) shall be
13 applied for such years without regard to the pre-
14 ceding sentence. Any reference to this clause or this
15 subparagraph by any other sections or subsections
16 (other than sections 4005, 4010, 4011 and 4043)
17 shall be treated as a reference to this clause or this
18 subparagraph without regard to this subclause.”.

19 (d) EFFECTIVE DATE.—

20 (1) GENERAL RULE.—Subject to paragraph (2),
21 the amendments made by this section shall take ef-
22 fect as if included in the amendments made by sec-
23 tion 405 of the Job Creation and Worker Assistance
24 Act of 2002.

1 (2) ELECTION.—The plan sponsor or plan ad-
2 ministrators of a plan may elect whether to have the
3 amendments made by subsections (a) and (b) apply.
4 Such election shall be made in such manner and at
5 such time as the Secretary of the Treasury or his
6 delegate may prescribe and, once made, may not be
7 revoked. An election to apply such amendments shall
8 not be treated as a prohibited change in actuarial
9 assumptions for purposes of reports required to be
10 filed with the Secretary of Labor, the Secretary of
11 Treasury, or the Pension Benefit Guaranty Corpora-
12 tion

13 **TITLE III—GENERAL** 14 **PROVISIONS**

15 **SEC. 301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16 (a) IN GENERAL.—If this section applies to any pen-
17 sion plan or contract amendment—

18 (1) such pension plan or contract shall be treat-
19 ed as being operated in accordance with the terms
20 of the plan during the period described in subsection
21 (b)(2)(A), and

22 (2) except as provided by the Secretary of the
23 Treasury, such pension plan shall not fail to meet
24 the requirements of section 411(d)(6) of the Internal
25 Revenue Code of 1986 and section 204(g) of the

1 Employee Retirement Income Security Act of 1974
2 by reason of such amendment.

3 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

4 (1) IN GENERAL.—This section shall apply to
5 any amendment to any pension plan or annuity con-
6 tract which is made—

7 (A) pursuant to any amendment made by
8 this Act or by title VI of the Economic Growth
9 and Tax Relief Reconciliation Act of 2001, or
10 pursuant to any regulation issued by the Sec-
11 retary of the Treasury or the Secretary of
12 Labor under this Act or such title VI, and

13 (B) on or before the last day of the first
14 plan year beginning on or after January 1,
15 2006.

16 In the case of a governmental plan (as defined in
17 section 414(d) of the Internal Revenue Code of
18 1986), this paragraph shall be applied by sub-
19 stituting “2008” for “2006”.

20 (2) CONDITIONS.—This section shall not apply
21 to any amendment unless—

22 (A) during the period—

23 (i) beginning on the date the legisla-
24 tive or regulatory amendment described in
25 paragraph (1)(A) takes effect (or in the

1 case of a plan or contract amendment not
2 required by such legislative or regulatory
3 amendment, the effective date specified by
4 the plan), and

5 (ii) ending on the date described in
6 paragraph (1)(B) (or, if earlier, the date
7 the plan or contract amendment is adopt-
8 ed),

9 the plan or contract is operated as if such plan
10 or contract amendment were in effect; and

11 (B) such plan or contract amendment ap-
12 plies retroactively for such period.